

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORMAN FLOYD WHITTIER,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

CASE NO. C13-5993 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 17), and Petitioner Norman Floyd Whittier’s (“Whittier”) objections to the R&R (Dkt. 18).

On May 21, 2014, Judge Creatura issued the R&R recommending that the Court deny Whittier’s petition because Whittier failed to show that his counsel was ineffective in not presenting a diminished capacity defense. Dkt. 17. On June 5, 2014, Whittier filed objections to the R&R. Dkt. 18. While Whittier cites numerous cases in support of ineffective assistance of counsel (Dkt. 18, ¶ 5), he fails to show that any of those cases apply to facts of his petition. The state court concluded that Whittier presented no evidence in support of his diminished capacity defense and failed to show that, even if

1 counsel obtained an evaluation, there was a reasonable probability that the outcome of
2 the trial would have been different. Dkt. 14, Exh. 11. The Court agrees with Judge
3 Creatura that Whittier has failed to show that the state court decision either violated
4 clearly established federal law or was an unreasonable application of federal law.

5 Therefore, the Court having considered the R&R, Whittier's objections, and the
6 remaining record, does hereby find and order as follows:

- 7 (1) The R&R is **ADOPTED**;
- 8 (2) Whittier's petition is **DENIED**;
- 9 (3) The Court declines to issue a certification of appealability; and
- 10 (4) The Clerk shall close this case.

11 Dated this 25th day of June, 2014.

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13 BENJAMIN H. SETTLE
14 United States District Judge

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